

The cost of the fabrication labor on pipes, as well as the cost of the pipes would be included in the Use Tax base of a construction contractor permanently installing custom-made piping as part of a construction contract. See 35 ILCS 105/3-10. (This is a GIL.)

November 8, 2000

Dear Xxxxx:

This letter is in response to your letter dated June 28, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We have a client seeking clarification on the taxability of fabrication labor on materials purchased for construction contracts.

Taxpayer is a nonresident subcontractor who incorporates fire protection devices into residential and commercial real estate construction. The taxpayer acquires custom-made piping and tubing to be used in the construction contract. The taxpayer requests separate bids from nonresident suppliers for the cost of pipes and the cost of labor to fabricate the pipes. Fabrication labor includes cutting, threading, grooving, and welding fittings onto the pipes. The taxpayer issues separate purchase orders for the materials and the fabrication labor. The supplier either separately states the cost of the pipes and the charge for the fabrication labor of the pipes on one invoice or bills the charges on two separate invoices, depending on the size of the job.

The suppliers are not 'doing business' in your state and, therefore, are not required to collect and remit sales tax. Accordingly, our client is responsible for the payment of sales or use tax in connection with their construction contracts in your state. We request your response to the following question.

Under these circumstances, is the charge for the fabrication labor on the pipes a taxable service?

Should you need additional information for your determination, please contact me at the telephone number above.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer.

Persons who contract to permanently affix tangible personal property to real estate, thereby making improvements to real estate, are considered to be construction contractors. In Illinois, construction contractors are deemed to be the users of the items that they permanently affix to realty and owe Use Tax on the cost price of the tangible personal property that they so affix. If purchases are made from Illinois registered suppliers, the tax is to be paid to those suppliers at the rates in effect at the suppliers' location. If purchases are made from out-of-State suppliers not registered to collect Illinois tax, contractors must self-assess this tax and remit it to the Department.

The Illinois Use Tax is imposed at the rate of 6.25% of the selling price of the tangible personal property. 35 ILCS 105/3-10. "Selling price" means "the consideration for a sale valued in money whether received in money or otherwise...and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include interest or finance charges which appear as separate items on the bill of sale or sales contract..." 35 ILCS 105/2. In the situation described above, if the fabrication labor is contracted for separately from the purchase of the pipes, only the cost price of the pipes is subject to Use Tax. However, if the fabrication labor is part of the contract for purchasing the pipes, the cost of the fabrication labor and the cost of the pipes are both subject to Use Tax, even if these costs are separately stated on the bill.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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